

# Calendar No. 883

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-884

## HANNIBAL B. TAYLOR

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MAY 19, 1970.—Ordered to be printed

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Mr. BURDICK, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 9910]

The Committee on the Judiciary, to which was referred the bill (H.R. 9910) for the relief of Hannibal B. Taylor, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay the sum of \$964.93 to Hannibal B. Taylor of New Haven, Mo., in settlement of his claims against the United States based on the failure of the U.S. Air Force to compute his retirement pay for the period October 1, 1949, through September 22, 1958, at the rate to which he was entitled as a second lieutenant who served in the Army during World War I.

#### STATEMENT

The Department of the Air Force in its report to the House Judiciary Committee on the bill noted that Hannibal B. Taylor had attempted to have the matter adjusted by timely action on his part, and that the Air Force personnel had failed to take the proper action and, for these reasons, it would not object to the bill's enactment.

The Comptroller General in his report to the House committee on the bill indicated that in view of the particular facts and circumstances of this case, the General Accounting Office is not opposed to the bill.

Air Force records show that Lieutenant Taylor, AW2126360, retired from the Army Air Corps on December 31, 1945, after more than 31 years of military service. During his military career, he served as an enlisted member except for a period during World War I, when he served as a second lieutenant, and a period during World War II, when he served as a warrant officer. Concurrent with his retirement, he was advanced from the grade of first sergeant to the grade of second lieutenant on the retired list. Advancement was in accordance with the act of May 7, 1932 (47 Stat. 150), which provided that upon retirement a member would be advanced on the retired list to the highest grade held. This advancement did not authorize computation of retired pay based on the grade to which advanced. Under the act of June 6, 1924 (43 Stat. 472), as amended by the act of June 24, 1936 (49 Stat. 1900), he was entitled to retired pay computed on the pay of a warrant officer. These acts authorized any enlisted member who served as a commissioned officer between April 6, 1917, and November 12, 1918, to have his retired pay based on the pay of a warrant officer upon retirement.

The Career Compensation Act of 1949 (Public Law 81-351 (63 Stat. 802)), effective October 1, 1949, changed the rules for determining the grade in which a member was entitled to be retired and authorized increases in the rates of retired pay. Section 511 of that act provided, among other things, that a member retired before October 1, 1949, was entitled to (a) retired pay based in the active duty rates in effect September 30, 1949, or (b) retired pay equal to 2½ percent of the monthly basic pay of the highest grade held multiplied by his years of service, whichever was greater. To implement this provision, the military departments recomputed the member's retired pay based on the method which would give him the highest rate of retired pay. Under section 513 of the act, an enlisted member who served during World War I was entitled to be advanced on the retired list to the highest federally recognized officer grade held, under a permanent or temporary appointment, between April 6, 1917, and November 11, 1919, and to have his retired pay computed on the basis of the grade to which advanced.

Early in 1950, Lieutenant Taylor applied to the Air Force to have his retired pay recomputed under the Career Compensation Act. On May 5, 1950, the Air Force informed him that he was eligible for consideration under section 511 of the act. However, the Air Force stated, erroneously, that since the retired pay of all members had been recomputed in accordance with that act, he was receiving retired pay in the highest grade he had ever held and was receiving the maximum benefits for which he was eligible under the Career Compensation Act.

In 1968, an article published in an information bulletin for retired members pointed out that certain members were entitled to be retired in and receive retired pay computed on the highest temporary grade held while on active duty. Lieutenant Taylor asked the Air Force whether he was entitled to have his retired pay recomputed under this provision based on his service as a second lieutenant during World War I. A review of his records showed he was not eligible for advancement under the provisions discussed in the information bulletin since he had held a permanent officer grade during World War I. However, this review showed that the information furnished him in 1950, that he was receiving retired pay based on the highest grade he had ever

held, was erroneous. It was also established that he was entitled to receive retired pay computed on the pay of a second lieutenant based on his service during World War I in that grade.

Effective October 1, 1968, Lieutenant Taylor's retired pay was recomputed based on the pay of a second lieutenant. As a result, he received an increase in retired pay of \$5.82 a month. The difference between the retired pay he had received and the pay he should have received from October 1, 1949, through September 30, 1968, was computed at \$1,586.47. Since a portion of this amount represented a claim against the United States which had not been received by the General Accounting Office within 10 years of the date it accrued, the case was submitted to the Claims Division, GAO, for approval prior to payment. This is the basic problem that H.R. 9910 would remedy. The amount stated in the bill is the amount which was not paid to Lieutenant Taylor because of this statute of limitations.

Early in January 1969, GAO approved payment of \$621.54 which was paid to Lieutenant Taylor on January 13, 1969. This amount represents that portion of the claim which accrued from September 23, 1958 (10 years prior to the date the claim was recorded by GAO), through September 30, 1968. As has been noted, payment of the remainder of the claim \$964.93, representing his claim for increased retired pay for the period October 1, 1949, through September 22, 1958 (the period which extends beyond the 10 years within which the claim was recorded by GAO), is barred by the statute of limitations on the filing of claims against the United States (act of October 9, 1940 (31 U.S.C. 71a)). There are no administrative procedures under which this portion of the claim may be paid.

The Department of the Air Force in its report recognized that the failure to properly adjust Lieutenant Taylor's retired pay as authorized by the Career Compensation Act effective October 1, 1949, was the result of administrative error. In considering his case, Air Force personnel overlooked the fact that although his grade on the retired list was that of second lieutenant, which was the highest grade he had ever held, he was receiving retired pay computed on the pay of a warrant officer. The error was compounded when his request for adjustment was received in 1950.

The Air Force in indicating that it was not opposed to enactment of the bill took into consideration the factors outlined above and, in particular, the fact that Lieutenant Taylor in 1950 specifically requested the Air Force that his pay be recomputed under the Career Compensation Act and was given erroneous information which had the effect of denying him the payment with which this bill is concerned. In this connection the Air Force stated:

The Air Force regrets these administrative errors. Generally, the Air Force opposed any deviation from or exception to the statute of limitations on claims against the United States. In this case, however, Lieutenant Taylor's attempt to have his claim considered on a timely basis was nullified by administrative error. Therefore, the Department of the Air Force interposes no objection to enactment of H.R. 9910.

The General Accounting Office in its report referred to the same facts discussed above and further pointed out that the statute of limi-

tations applicable to payments in this instance required that the application be made to the General Accounting Office within the period. Accordingly, the request made by Mr. Taylor to the Air Force did not have the effect of tolling this statute. However, as has been noted, this factor and the other circumstances of this case were recognized by the General Accounting Office and are taken as the basis for its not opposing enactment of the bill.

Accordingly, the committee recommends favorable consideration of H.R. 9910, without amendment.

Attached hereto and made a part hereof are the reports submitted to the House Judiciary Committee by the Department of the Air Force and the Comptroller General of the United States.

DEPARTMENT OF THE AIR FORCE,  
*Washington, July 8, 1969.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 9910, 91st Congress, a bill for the relief of Hannibal B. Taylor.

The purpose of H.R. 9910 is to authorize and direct the Secretary of the Treasury to pay to Hannibal B. Taylor \$964.93. This amount represents his claim against the United States arising out of the failure of the U.S. Air Force to compute his retired pay at the rate to which he was entitled from October 1, 1949, to September 23, 1958, based on his service as a second lieutenant during World War I. Agent or attorney fees are limited to 10 percent of the amount appropriated by H.R. 9910.

Air Force records show that Lieutenant Taylor, AW2126360, retired from the Army Air Corps on December 31, 1945, after more than 31 years of military service. During his military career, he served as an enlisted member except for a period during World War I, when he served as a second lieutenant, and a period during World War II, when he served as a warrant officer. Concurrent with his retirement, he was advanced from the grade of first sergeant to the grade of second lieutenant on the retired list. Advancement was in accordance with the act of May 7, 1932 (47 Stat. 150), which provided that upon retirement a member would be advanced on the retired list to the highest grade held. This advancement did not authorize computation of retired pay based on the grade to which advanced. Under the act of June 6, 1924 (43 Stat. 472), as amended by the act of June 24, 1936 (49 Stat. 1900), he was entitled to retired pay computed on the pay of a warrant officer. These acts authorized any enlisted member who served as a commissioned officer between April 6, 1917, and November 12, 1918, to have his retired pay based on the pay of a warrant officer upon retirement.

The Career Compensation Act of 1949 (Public Law 81-351 (63 Stat. 802)), effective October 1, 1949, changed the rules for determining the grade in which a member was entitled to be retired and authorized increases in the rates of retired pay. Section 511 of that act provided, among other things, that a member retired before October 1, 1949, was



entitled to (a) retired pay based on the active duty rates in effect September 30, 1949, or (b) retired pay equal to 2½ percent of the monthly basic pay of the highest grade held multiplied by his years of service, whichever was greater. To implement this provision, the military departments recomputed the member's retired pay based on the method which would give him the highest rate of retired pay. Under section 513 of the act, an enlisted member who served during World War I was entitled to be advanced on the retired list to the highest federally recognized officer grade held, under a permanent or temporary appointment, between April 6, 1917, and November 11, 1919, and to have his retired pay computed on the basis of the grade to which advanced.

Early in 1950, Lieutenant Taylor applied to the Air Force to have his retired pay recomputed under the Career Compensation Act. On May 5, 1950, the Air Force informed him that he was eligible for consideration under section 511 of the act. However, the Air Force stated, erroneously, that since the retired pay of all members had been recomputed in accordance with that act, he was receiving retired pay in the highest grade he had ever held and was receiving the maximum benefits for which he was eligible under the Career Compensation Act.

In 1968, an article published in an information bulletin for retired members pointed out that certain members were entitled to be retired in and receive retired pay computed on the highest temporary grade held while on active duty. Lieutenant Taylor asked the Air Force whether he was entitled to have his retired pay recomputed under this provision based on his service as a second lieutenant during World War I. A review of his records showed he was not eligible for advancement under the provision discussed in the information bulletin since he had held a permanent officer grade during World War I. However, this review showed that the information furnished him in 1950, that he was receiving retired pay based on the highest grade he had ever held, was erroneous. It was also established that he was entitled to receive retired pay computed on the pay of a second lieutenant based on his service during World War I in that grade.

Effective October 1, 1968, Lieutenant Taylor's retired pay was recomputed based on the pay of a second lieutenant. As a result, he received an increase in retired pay of \$5.82 a month. The difference between the retired pay he had received and the pay he should have received from October 1, 1949, through September 30, 1968, was computed at \$1,586.47. Since a portion of this amount represented a claim against the United States which had not been received by the General Accounting Office (GAO) within 10 years of the date it accrued, the case was submitted to the Claims Division, GAO, for approval prior to payment.

Early in January 1969, GAO approved payment of \$621.54 which was paid to Lieutenant Taylor on January 13, 1969. This amount represents that portion of the claim which accrued from September 23, 1958 (10 years prior to the date the claim was recorded by GAO), through September 30, 1968. Payment of the remainder of the claim, \$964.93, representing his claim for increased retired pay for the period October 1, 1949, through September 22, 1958 (the period which extends beyond the 10 years within which the claim was recorded by GAO), is barred by the statute of limitations on the filing of claims

against the United States (act of October 9, 1940 (31 U.S.C. 71a)). There are no administrative procedures under which this portion of the claim may be paid.

The failure to properly adjust Lieutenant Taylor's retired pay as authorized by the Career Compensation Act, effective October 1, 1949, was the result of administrative error. In considering his case, Air Force personnel overlooked the fact that although his grade on the retired list was that of second lieutenant, which was the highest grade he had ever held, he was receiving retired pay computed on the pay of a warrant officer. The error was compounded when his request for adjustment was received in 1950. The Air Force regrets these administrative errors. Generally, the Air Force opposes any deviation from or exception to the statute of limitations on claims against the United States. In this case, however, Lieutenant Taylor's attempt to have his claim considered on a timely basis was nullified by administrative error. Therefore, the Department of the Air Force interposes no objection to enactment of H.R. 9910.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

SPENCER J. SCHEDLER,  
*Assistant Secretary of the Air Force.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., May 29, 1969.*

B-166680.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of April 15, 1969, requesting our views on H.R. 9910, a bill for the relief of Hannibal B. Taylor.

The bill would authorize and direct the Secretary of the Treasury to pay to Mr. Taylor the sum of \$964.93 in full settlement of all his claims against the United States arising out of the failure of the U.S. Air Force to compute his retired pay for the period October 1, 1949 to September 23, 1958 at the rate to which he was entitled as a second lieutenant who served in the U.S. Army during World War I.

It appears from the records before us that Mr. Taylor served on active duty in the Army as a second lieutenant, ORC, from October 15, 1917, to April 11, 1919; that he served as a warrant officer, junior grade, from December 1, 1943, to April 23, 1945; and that he was retired under 10 United States Code 947 (1940 ed.) as a first sergeant effective December 31, 1945, after completing more than 30 years of service, and was immediately advanced to the rank of second lieutenant under the act of May 7, 1932, ch. 171, 47 Stat. 150, 10 United States Code 1028c (1940 ed.).

The advancement to the rank of second lieutenant under the 1932 act was an honorary promotion only, as that act provided for advance-

ment on the retired list "to the highest commissioned \* \* \* grade held" during World War I and that "no increase in \* \* \* retired pay \* \* \* shall result from the passage of this section [act]." The records indicate that commencing January 1, 1946, Mr. Taylor was paid retired pay computed on the basis of a warrant officer, junior grade, with over 30 years' service.

Under the provisions of section 513 of the Career Compensation Act of 1949, approved October 12, 1949 (ch. 681, 63 Stat. 830, 37 U.S.C. 313 (1952 ed.)), which became effective October 1, 1949, enlisted persons and warrant officers who had served in World War I were authorized to be advanced on the retired list to the highest federally recognized rank or grade satisfactorily held by such enlisted person or warrant officer under a permanent or temporary appointment for any period of service between April 6, 1917, and November 11, 1918, and to receive retired pay computed on the basis of such officer rank or grade if not entitled otherwise to a higher grade.

Since Mr. Taylor served in World War I as a second lieutenant during the period October 15, 1917, to April 11, 1919, it would appear that under section 513 of the 1949 act he was entitled, if otherwise qualified, to be advanced on the retired list to the grade of second lieutenant and have his retired pay computed on that basis (effective from October 1, 1949). The difference between the 1932 act under which he was advanced on the retired list to the grade of second lieutenant and the 1949 act is that the former law precluded any increase in retired pay whereas the latter authorized retired pay computed on the higher grade.

The record further indicates that in 1950 Mr. Taylor made inquiry of the Department of the Air Force concerning his eligibility for increased retired pay benefits under the provisions of the Career Compensation Act of 1949. In reply to his inquiry the Department of the Air Force, in a letter dated May 5, 1950, copy enclosed, erroneously advised him that he was receiving the maximum benefits to which he was entitled under the 1949 act. In 1968, Mr. Taylor addressed a letter to the Air Force inquiring about the difference between the rate of retired pay of a warrant officer, W-1, and that of a second lieutenant with over 30 years' service.

There was received in this Office on September 23, 1968, by reference from the Air Force Accounting and Finance Center, Denver, Colo., Mr. Taylor's claim for the difference between the retired pay of a warrant officer, junior grade, and that of a second lieutenant for the period October 1, 1949, to September 30, 1968.

By settlement dated January 6, 1969, copy enclosed, we authorized payment in favor of Mr. Taylor for increased retired pay under section 513 of the 1949 act for the period September 23, 1958, to September 30, 1968, but denied that portion of his claim for the period October 1, 1949, to September 22, 1958, because of the provisions of the act of October 9, 1940, ch. 788, 54 Stat. 1061, 31 U.S.C. 71a, 237, which bar consideration of "Every claim or demand \* \* \* against the United States cognizable by the General Accounting Office \* \* \* unless such claim \* \* \* shall be received in said office within ten full years after the date such claim first accrued \* \* \*." As indicated above, Mr. Taylor's claim was not received here until September 23, 1968, and hence

the law precludes consideration of his claim for any period prior to that date. The amount (\$964.93) remaining unpaid for the period October 1, 1949, to September 22, 1958, is the amount stated in H.R. 9910.

In view of the particular facts and circumstances of this case, we are not opposed to the enactment of the bill. If it should be given favorable consideration, we suggest that the date "September 22, 1958," be substituted for the date "September 23, 1958," appearing in section 1 of the bill, since Mr. Taylor was paid increased retired pay for September 23, 1958, as shown in our settlement of January 6, 1969.

Sincerely yours,

R. F. KELLER,

(For the Comptroller General of the United States).

Enclosures.

DEPARTMENT OF THE AIR FORCE,  
HEADQUARTERS, U.S. AIR FORCE,  
*Washington, D.C., May 5, 1950.*

Subject: Retirement pay.

To: WOJG Hannibal B. Taylor, AFUS Retired, 1305 Commonwealth,  
Los Angeles 27, Calif.

1. Reference is made to your inquiry regarding your eligibility for increased benefits under the provisions of Public Law 351, 81st Congress, approved October 12, 1949 (Career Compensation Act of 1949).

2. You were eligible for consideration under the provisions of section 511 of the above cited act, which provides that personnel retired for reasons other than physical disability will be entitled to receive the retired pay which they were receiving prior to the passage of this act or to receive retired pay at the rate of  $2\frac{1}{2}$  percent of the monthly basic pay of the highest federally recognized grade satisfactorily held, multiplied by the number of years of active service, whichever is greater.

3. The Department of the Air Force has been advised by the Finance Officer, U.S. Army, Washington, D.C., that the retired pay of all personnel retired for reasons other than physical disability has been recomputed in accordance with the Career Compensation Act of 1949, and that they are now in receipt of such pay.

4. Inasmuch as you are now receiving retired pay in the highest grade ever held by you for a period of 6 months while serving on active duty, it has been determined that you are now receiving the maximum benefits for which you are eligible under the provisions of Public Law 351, 81st Congress.

By command of the Chief of Staff.

ALLAN E. POOLE,  
Major, U.S. Air Force,  
*Office, Director of Military Personnel.*



Standard Form No. 104-A		JBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL	
PURCHASER AND LOCATION		DATE VOUCHER PREPARED 10 OCT 1960	VOUCHER NUMBER
CONTRACT NUMBER AND DATE		PAID BY	
REQUISITION NUMBER AND DATE		DATE INVOICE RECEIVED	
PAYEE'S NAME AND ADDRESS		DISCOUNT TERMS	
PAYEE'S ACCOUNT NUMBER		GOVERNMENT B L NUMBER	
SHIPPED FROM		TO	WEIGHT
NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)	QUANTITY
			UNIT PRICE COST PER
		Adjustment of retired pay for 2nd Lt Marshall L. Taylor, IV 212 6560, in accordance with Section 513 of the Excess Compensation Act of 1949, for period September 23, 1958 through 10 September 1968.	\$621.54
		Your claim was not received in the General Accounting Office until September 28, 1960. Therefore, that portion of your claim for the period prior to September 23, 1958 is barred pursuant to the provisions of the Act of October 9, 1940, 54 Stat. 1061.	\$621.54
Use continuation sheet(s), if necessary		(Payee must NOT use the space below)	TOTAL
PAYMENT:		DIFFERENCES	
<input type="checkbox"/> COMPLETE			
<input type="checkbox"/> PARTIAL			
<input type="checkbox"/> FINAL		\$621.54	
<input type="checkbox"/> PROGRESS		Amount verified; correct for	
<input type="checkbox"/> ADVANCE		(Signature or initials)	
<b>MEMORANDUM</b>			
ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown; other classification optional)			
5770000.02 031 42 557		\$470.02	
5770000.02 857 1931.02 202 5594700		66.20	
5770000.02 858 1931.02 102 5594700		67.86	
5770000.02 859 1931.02 202 5594700		17.46	
NET CASH 2			
CHECK NUMBER	ON TREASURER OF THE UNITED STATES	CHECK NUMBER	ON (Name of bank)
CASH	DATE		
PAID BY \$			
RELEASED TO: 98420 6 1960			

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